



**Vidaurri,
Lyde,
Rodriguez &
Haynes, LLP**

A South Texas Law Firm

SUMMARY

- Claims based on same set of facts cannot be brought as both health care liability claims (subject to the TMLA) and ordinary negligence claims.
- Allowing same underlying facts to give rise to multiple types of claims would effectively negate TMLA's procedures and limitations.

NEWS:

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VLRH Newsletter

Volume 2, Issue 1



January 2011

No Double Dipping at the Water Park

The Texas Supreme Court last month ruled on whether certain claims against health care providers can be brought as both health care liability claims (subject to the Texas Medical Liability Act) and as ordinary negligence claims (not subject to the TMLA). The Texas Supreme Court held that they cannot.

The case's underlying facts were quite sad. A girl goes to a water park, collapses while waiting for a ride, and later dies at the hospital. The parents sued the water park alleging that personnel failed to use an automated external defibrillator, which they argued could have saved the girl.

The parents also sued a doctor who had provided medical consulting advice and guidance for the park's safety practices and procedures, including the placement of defibrillators. Note: there was never a doctor-patient relationship between the doctor and the girl.

The doctor moved to dismiss the case when the parents did not file an expert report as required by section 74.351 of the Texas Civil Practices and Remedies Code. The parents conceded that their failure to file an expert report precluded them from pursuing their health care liability claim, but they argued that it did not preclude them from arguing that the doctor had violated ordinary standards of care not subject to the TMLA (the doctor's alleged faulty advice and recommendations).

The Court of Appeals held that the parents' allegations that the doctor's actions violated medical standards of care were health care liability claims and the parents were required to comply with the TMLA as to those claims. Paradoxically, the Court additionally held that the very same actions by the doctor were also violations of ordinary standards of care, which were not subject to the TMLA.

The Supreme Court disagreed. They were troubled that parties would circumvent the Legislature's intent in enacting the TMLA if claims against a doctor could be divided into health care and non-health care liability claims simply by pleading that the same underlying actions violated different standards of care. According to the Court, "[a]pplication of the TMLA cannot be avoided by artfully pleading around it or splitting claims into both health care liability claims and other types of claims such as ordinary negligence claims."

In this case, the Court found that the nature of plaintiffs' claims against the doctor included health care liability claims. The Court went on to hold that, "[w]hen the underlying facts are encompassed by provisions of the TMLA in regard to a defendant, then all claims against that defendant based on those facts must be brought as health care liability claims."

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